

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Emem Ufot Udoh,

Case No. 21-CV-1588 (JRT/JFD)

Petitioner,

v.

REPORT AND RECOMMENDATION

State of Minnesota,

Respondent.

Petitioner Emem Ufot Udoh was convicted in state court on one count of criminal sexual conduct and sentenced to a 144-month term of imprisonment. *See State v. Udoh*, No. A14-2181, 2016 WL 687328 (Minn. Ct. App. Feb. 22, 2016). Udoh has more than once sought habeas corpus relief from that conviction in this District. The first of those habeas petitions was denied on the merits. *See Udoh v. Dooley*, No. 16-CV-4174 (PAM/HB), 2017 WL 2881126 (D. Minn. July 6, 2017). A subsequent habeas petition filed by Udoh attacking the same conviction was summarily dismissed without prejudice for lacking authorization from the United States Court of Appeals for the Eighth Circuit. *See Udoh v. Knutson*, No. 19-CV-1311 (MJD/HB), 2019 WL 5150141 (D. Minn. May 31, 2019), *R. & R. adopted by* 2019 WL 4073392 (D. Minn. Aug. 29, 2019). Udoh now returns to federal district court to challenge his conviction once more.

Udoh all but acknowledges that his latest petition is successive within the meaning of 28 U.S.C. § 2244(b)(3) (*see* Dkt. No. 3), and he is correct. Having attacked the validity of his conviction in state court previously and having been denied habeas relief on the

merits, Udoh may not launch another attack on his conviction absent authorization of the Eighth Circuit. *See* 28 U.S.C. § 2244(b)(3). The Eighth Circuit has refused Udoh the required authorization. *See Udoh v. State of Minnesota*, No. 21-2434 (8th Cir. Aug. 5, 2021) (judgment denying authorization). This Court thus lacks jurisdiction to consider the merits of Udoh’s latest petition, which must therefore be denied without prejudice.

Dismissal of this matter without prejudice is recommended accordingly. Udoh’s pending application to proceed *in forma pauperis* may be denied as moot, as may his motion for the Court to accept the petition for habeas corpus — which, appropriately, has been docketed and thus already “accepted” notwithstanding the restriction placed upon it by § 2244(b)(3). Finally, because the merits of the dismissal are not fairly debatable, Udoh should not be granted a certificate of appealability. *See* 28 U.S.C. § 2253(c). Udoh is warned that subsequent petitions filed by him for a writ of habeas corpus found to be successive within the meaning of § 2244(b)(3) may be dismissed without further substantive comment.

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY RECOMMENDED THAT:**

1. This matter be **DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction.
2. The application to proceed *in forma pauperis* of petitioner Emem Ufot Udoh (Dkt. No. 2) be **DENIED AS MOOT**.
3. Udoh’s motion to accept (Dkt. No. 3) be **DENIED AS MOOT**.

4. No certificate of appealability be issued.

Dated: August 16, 2021

s/ John F. Docherty
JOHN F. DOCHERTY
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).